

Internal Revenue Service

Department of the Treasury

STATE
OFFICIAL

Regional
Commissioner

Southwest Region

Address any reply to Appeals Office

CERTIFIED MAIL

Person to Contact:

Telephone Number:

Refer Reply to:

Date:

8 DEC 1982

Dear Sir or Madam:

This is a final adverse determination with respect to your exempt status under section 501(c)(3) of the Internal Revenue Code.

It is determined that you are not entitled to exempt status under Section 501(c)(3) because you are not operated exclusively for one or more exempt purposes. You serve private rather than public purposes and your net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Contributions made to your organization are not deductible under section 170 of the Internal Revenue Code.

You are required to file Federal income tax returns with your Key District Director for exempt organization matters for taxable years for which the filing date of the appropriate return has passed. These returns should be filed within 30 days of the date of this letter, unless a request for extension of time is granted. Please send them to the attention of the EP/EO Division, attach a copy of this letter, and address any requests for time extensions to the EP/EO Division. Processing of an income tax return and assessing any taxes due will not be delayed because a petition for a declaratory judgment has been filed under section 7428 of the Internal Revenue Code.

We will notify the appropriate state officials, as required by section 6104(c) of the Code, that based on the information we have available, we are unable to recognize you as an organization described in section 501(c)(3) of the Internal Revenue Code for the period mentioned.

If you decide to contest this determination in court, a petition for a declaratory judgment proceeding in the United States Tax Court, the United States Court of Claims, or the United States District Court for the District of Columbia must be filed within 90 days from the date this determination was mailed to you. Contact the Clerk of the appropriate court for rules for filing petitions for declaratory judgment. For more information, please see the declaratory judgment section of the enclosed Publication 892.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Thank you for your cooperation.

Sincerely,



Associate Chief, Appeals

Enclosure:
Publication 892

c: 

APR 16 1981

Gentlemen:

Your application for exemption from Federal income tax as an organization under section 501(c)(3) of the Internal Revenue Code has been considered.

Your Articles of Incorporations submitted with your application indicate that you were incorporated [REDACTED], under the [REDACTED] Nonprofit Corporation Act to conduct and carry on projects and work for religious, charitable scientific, literary or educational purposes.

Article Fifth of your Articles of Incorporation indicates that members of your corporation will consist of [REDACTED] and such other persons as may be provided by the Bylaws of the Corporation.

Article Sixth further provides that the number of directors shall be fixed by the Bylaws and the initial board shall be one in number consisting of [REDACTED].

Your Bylaws state that "The members of the corporation shall consist of [REDACTED] and upon his death his sons [REDACTED] and [REDACTED] if they should survive him. If they do not, then the members shall consist of a person designated by the personal representative of [REDACTED]. The board of directors of the corporation may further designate such honorary and non-voting members as it chooses.

Additional information shows that your art and cultural activities are conducted as a joint venture with [REDACTED] which is a Subchapter S corporation owned by [REDACTED].

Promotional literature for the [REDACTED] exhibit states that the exhibit is presented by [REDACTED], affiliated with the [REDACTED]

CODE	INITIALS	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
SUR NAME		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		2-6-81	4-3-81	4-16-81			

The promotion for the [redacted] exhibit indicates that the exhibit is presented by [redacted] and will be open to the public at no charge, due in part to a grant from [redacted].

[redacted] name is prominently displayed on your promotional literature.

In your Request For Funding to sponsor a display of paintings and drawings by [redacted] and a film entitled "[redacted]" you indicated that the exhibits will be open to the general public from [redacted] to [redacted], Monday, Wednesday, and Friday between 11:00 AM and 2:00 PM at no charge. The film will be made available to [redacted] area universities and similar groups at no charge. You also indicated that [redacted]'s works will be for sale and that the film will be shown to patrons on a charge basis with the proceeds going to [redacted].

In other requests for funding for display of the [redacted]'s works and display of drawings and paintings by [redacted] and a film featuring [redacted] film "[redacted]", you indicated that the art work will be for sale and films will be shown to patrons with the proceeds going to [redacted].

Financial information submitted indicates you received a contribution from the [redacted] for \$[redacted] of which \$[redacted] was in turn contributed to [redacted].

Section 501(c)(3) of the Code provides exemption for:

"Corporations...organized and operated exclusively for religious, charitable,...or educational purposes,...no part of the net earnings of which inures to the benefit of any private shareholder or individual..."

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that:

"An organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3)..."

"(d)(1)(ii) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interest such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interest."

Revenue Ruling 71-395, 1971-2 C.B. 228, held that a cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works does not qualify for exemption under IRC 501(c)(3).

Revenue Ruling 76-152, 1976 C.B. 151, held that an organization formed by art patrons to promote community understanding of modern art, trends by selecting for exhibit, exhibiting, and selling art works of local artists, retaining a commission on sales less than customary commercial charges and not sufficient to cover the cost of operating the gallery, does not qualify for exemption under IRC 501(c)(3).

In the case of Better Business Bureau v. United States (326 U.S. 279(1945), Ct. D. 1650) it was held that the presence of a single noncharitable or noneducational purpose, if substantial in nature, will preclude exemption under section 501(c)(3) regardless of the number or importance of truly charitable or educational purposes.

We have determined that you are not operated exclusively for one or more exempt purposes in section 501(c)(3) of the Code because you are not operated to serve public interests but rather serve the private interests of your creator.

Your Articles of Incorporation and By-Laws provide for the Perpetual control of your organization by your creator and his descendants.

All of your activities are conducted as a joint venture with [REDACTED], which is for-profit Subchapter S Corporation owned by [REDACTED].

You also conduct sales of art works you display, similar to Revenue Ruling 76-152, with all the proceeds going to [REDACTED]. Such sales inure to the benefit of your creator.

Benefits also inure to your creator in the form of advertising since your literature also promotes [REDACTED].

Further the private interests of [REDACTED], are served to the extent that the expenditures for security, management and overhead also benefit [REDACTED].

Based on the above we have determined that you do not qualify for exemption from Federal income tax under the provisions of section 501(c)(3) of the Code.

We also considered your request for status as a private operating foundation under section 4942(j)(3) of the Code.

Section 4942(j)(3) of the code defines the term "operating foundation" as any organization -

"(A) which makes qualifying distributions (within the meaning of paragraph (1) or (2) of subsection (g)) directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated equal to substantially all of its adjusted net income as defined in subsection (f); and

(B)(i) substantially more than half of the assets of which are devoted directly to such activities or to functionally related businesses (as defined in paragraph (5)), or to both, or are stock of a corporation which is controlled by the foundation and substantially all of the assets of which are so devoted,

(ii) which normally makes qualifying distributions (within the meaning of paragraph (1) or (2) of subsection (g)) directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated in an amount not less than two-thirds of its minimum investment return (as defined in subsection (e)), or

(iii) substantially all of the support (other than gross investment income as defined in section 509(a)) of which is normally received from the general public and from 5 or more exempt organizations which are not described in section 4946(a)(1)(B) with respect to each other or the recipient foundation; not more than 25 percent of the support (other than gross investment income) of which normally received from any one such exempt organization; and not more than half of the support of which is normally received from gross investments income."

Section 4942(g)(1) of the Code defines "qualifying distribution" in part as -

"(A) any amount (including administrative expenses) paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to (i) an organization controlled (directly or indirectly) by the foundation or one or more disqualified persons (as defined in section 4946) with respect to the foundation, except as provided in paragraph (3), or (ii) a private foundation which is not an operating foundation (as defined in subsection (j)(3), except as provided in paragraph (3), or

(B) any amount paid to acquire an asset used (or held for use) directly in carrying out one or more purposes described in section

(5)

Section 4946 defines a "disqualified person" as (1) a substantial contributor to the foundation; (2) a foundation manager; (3) an owner of more than 20 percent of the total combined voting power of a corporation, the profits interest of a partnership, or the beneficial interest of a trust or unincorporated enterprise with substantial contributor to the foundation; (4) a member of the family of any individual described in (1), (2) or (3); (5) a corporation of which persons described in (1), (2), (3) or (4) own more than 35 percent of the total combined voting power, etc.

A substantial contributor, as defined in section 507(d)(2) means any person, including an individual, a trust, estate, partnership, association, company or corporation, who contributed or bequeathed an aggregate amount of more than \$5,000.00 to the private foundation, if such amount is more than 2 percent of the total contributions and bequests received by the foundation before the close of the taxable year of the foundation in which the contribution or bequest is received by the foundation from such person.

Since you make payments and contributions to [REDACTED], an organization controlled by a disqualified person, you do not meet the requirements for an operating foundation.

Accordingly, we have concluded that you do not qualify for exemption from Federal income tax under the provisions of section 501(c)(3) of the Code.

It follows, therefore, that contributions to you are not deductible by donors under section 170 of the Code.

Also, bequests, legacies, devises, transfers or gifts to you or for your use are not deductible under sections 2055, 2106, and 2522 of the Code.

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible. You should also file the enclosed Federal income tax return(s) within 30 days with the Chief, Employee Plan/Exempt Organization Division 1100 Commerce, Dallas, Texas 75242.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If we do not hear from you within 30 days, this letter will be our determination in the matter.

(5)

[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that: "A declaratory judgment or decree under this section shall not be docketed in any proceeding unless the Tax Court, the Court of Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 5104(e) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

Sincerely,

[REDACTED]
District Director

Enclosures: Publication 892
Form 6018
Form 1120: [REDACTED]
Envelope

cc: [REDACTED]